IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3155 OF 2004

Suresh A. Kakkar,
Dy. Inspector General of Police
(IPS), Addl. Commissioner of
Police (Crime), Office of the
Commissioner of Police, Thane
residing at : A/10, Building
No. 13, K. Khade Marg, Haji Ali,
Mumbai 400 034. .... Petitioner

Versus

1. The Union of India, through
The Secretary, Ministry
of Home Affairs, Government
of India, North Block,
New Delhi 110 011.

2. State of Maharashtra, through
the Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.

3. Additional Chief Secretary (Home),
Government of Maharashtra,
Mantralaya, Mumbai 400 032. ... Respondents

Mr.Y.S. Jahagirdar, Sr. Counsel with Mr. R.G. Walia & Mr. G.S. Walia for Petitioner.

Mr. R.S. Shetty with Mr. O.A. Dubey for R. No. 1.

Mr. R.M. Sawant, Government Pleader for R. Nos. 2 and 3.

**CORAM: F.I. REBELLO &**
**MRS.V.K.TAHILRAMANI,JJ.**
**DATE : AUGUST 25, 2006**

ORAL JUDGMENT :

1. Rule. Heard forthwith.

. The Petitioner is presently holding the post of Deputy Inspector General of Police (IPS) and is posted as Additional Commissioner of Police (Crime) in the

Office of the Commissioner of Police, Thane. The petitioner after having put in eight years of service as Deputy Superintendent of Police was eligible for consideration by induction into the Indian Police Service. The Petitioner was appointed as Deputy Superintendent of police by order dated 184.1979 and as such in terms of rule, became eligible for consideration on 31.12.1987. In the year 1988, State Police recruits of 1978 batch were considered for induction in the year 1987 and were actually inducted by orders passed in 1988 and they were given 1984 as the year of their appointment to the Indian Police Service for the purpose of their seniority. The Petitioner was confirmed by order dated 13.4.1989 as Deputy Superintendent of Police with effect form 31.12.1987 by order of the State Government. The Petitioner was thus eligible to be considered on 1.1.1988. It is the case of the Petitioner that the State Government did not constitute any Selection committee in the years 1988 and 1989 when the petitioner became eligible to be considered for consideration for induction in Indian Police Service. The Petitioner was considered for induction into the Indian Police service in the meeting of the selection committee held in the year 1990. On 15.4.1991, a Notification was issued and the result of the Selection Committee was communicated. By order dated 26.5.1994 the Petitioner was given 1987 as the year of allotment, after 3 years. The appointments were made against the

vacancies which arose in the years 1988 and 1989, but the Petitioner was not treated as an appointee of that year i.e. 1988 or 1989 but 1991 effective from 1.1.1996. The Petitioner was appointed to the Junior Administrative Grade, by order dated 29.2.2006.

. On 20.7.1999, the Petitioner had made a representation to the Secretary, Ministry of Home Affairs, New Delhi, requesting for proper fixation of seniority and year of allotment in the Indian Police Service. As the Petitioner did not hear anything in the matter, Petition came to file O.A. No. 586 of 2000 before Central Administrative Tribunal, Mumbai which dismissed the O.A. by order dated 8.8.2003 on the ground of delay and non-joinder of necessary parties. It is against that order, that the Petitioner has filed the present petition.

2. At the hearing of this petition, on behalf of the Petitioner, it is submitted that the Petitioner was confirmed with effect from 31.12.1987 by order dated 13.4.1989 and as such on 1.1.1988 he became eligible for consideration. Merely because, the selection committee did not meet either in the year 1988 or 1989, cannot result in denying to the Petitioner his case for consideration, as on 1.1.1988. In as much as the respondents have chosen not to consider the Petitioner’s case from 1.1.1988, the same is illegal.

. It is no doubt true it is submitted that there was delay on the part of the Petitioner in approaching the tribunal. It is however, pointed out that another batchmate of the Petitioner Mr. G.D. Pol was placed above the Petitioner in the select list of 1989-90. Pursuant to proceedings filed by him and which were allowed, order came to be issued on 29.3.2006 giving the said Mr. G.D. Pol the date of appointment to IPS as 31.12.1988 and considering him at Sr. No. 1 of the virtual select list of 1988. Once the respondents themselves has considered the case of another person from the same batch, whose case was identical to that of the Petitioner, the learned tribunal ought not to have dismissed the Petitioner's case merely on the ground of delay.

. On behalf of the Respondents, the learned counsel had firstly relied on the judgement of S.S. Rathore Vs. State of Madhya Pradesh, AIR 1999 Supreme Court 10 to contend that the Petitioner has not approached the Tribunal within reasonable time. In so far as the Administrative Tribunal Act is concerned, there is provision for condonation of delay. There is therefore, power to condone the delay, if cause be shown. In the instant case, the Tribunal decided not to condone the delay. It is no doubt true that there was delay on the part of the Petitioners in approaching the Tribunal.

The fact however, remains that in so far as the Petitioner's batchmate is concerned, a review D.P.C. was held and the batchmate was given benefit. Once that be so, there would be a fresh cause of action for the Petitioner in claiming the same or similar right. The order in so far as Mr. Pol is concerned, was issued on 29.3.2006. In the select list prepared by U.P.S.C. on 24.9.1990, Mr. Pol was at Sr. No. 3 and the Petitioner was at Sr. No. 4. Once this court has pronounced its judgment, holding that the selection committee was required to meet to consider the vacancies as on 1.1.1988, the Respondents therefore, could have considered a review D.P.C. in all cases and not confined only to Mr. G.D. Pol as the Review D.P.C. was directed to be held, consequent upon failure by the D.P.C. to follow the law. At the relevant time, the Petitioner's application was pending before the Tribunal. The regulation themselves provided for recruitment both by promotion as also by direct recruitment. Interse seniority normally would therefore, be if there is no breakdown by rota and quota. Therefore, delay, if any, for cause shown and the facts on record ought to be condoned.

3. It is then submitted that the tribunal dismissed O.A. on the ground of non-joinder of necessary parties. In doing so the Tribunal, has clearly acted without jurisdiction. It is submitted that the Petitioner was

seeking a review D.P.C., on the ground that he was not considered as on 1.1.1988. When such relief is sought for, there is no question of joining others likely to be affected, even if that may result in re-drawing the order of seniority. The respondents who are left out were neither proper nor necessary parties for deciding whether Petitioner was eligible on 1.1.1988 and liable for consideration. On that count also, having regard to that, the order dismissing O.A. on the ground of non joinder of parties, is clearly without jurisdiction and consequently the impugned ordefkr is liable to be quashed and set aside. Admittedly, in terms of the rules as they stood for selection, the vacancies had to be filled in yearwise and the select list prepared accordingly. The only direction therefore, that can be issued to the Respondents, if the Petition is to be allowed, would be to direct holding of a review D.P.C. to consider Petitioner's case as of 1.1.1988. This exercise has also been done pursuant to the Judgment in the case of G.D. Pol Vs. Union of India, 2004 Mh.L.J. 701. In that case also the very issue which the Petitioner herein has urged was also in issue. Once the review D.P.C. was constituted by considering the case of G.D. Pol, it was incumbent on the Respondents considering that the aforesaid Mr. Pol was in the same list as the Petitioner to have suo motu considered, the cases of all persons who were appointed by the D.P.C. in respect of the select list which were prepared

pursuant to the committee meeting in 1990. Reliance was also placed in the judgment in the case of Khetrabasi Biswal Versus Ajay Kumar Baral and Others 2004 Supreme Court Cases (L & S) 182 to contend that non joinder of necessary party would be fatal and any order passed would be nullity at law. In that case, the State Government had modified the select list recommended by Orisa P.S.C. A Petition was filed by the selectees, whose names were omitted by the State Government. While interpreting the service rules in the Petition which was filed before the High Court, notice was not given to the candidates likely to be affected. Pursuant to that list prepared on the judicial side of the High Court, appointments were made by the Government. The Apex Court was pleased to hold that the writ of mandamus could not have been issued directing the State Government to appoint selectees in terms of the select list prepared by the High Court without notice to the Parties likely to be affected. In that case, the matter was remanded. The appellant before the Apex Court were not party to the proceedings before the High Court. The issue before the High Court was the select list prepared by the Orissa P.S.C. and as modified by the State Government. It is in these circumstances,that observations were made by the Apex Court. In the instant case, the Petitioner is not raising any interse dispute to the select list prepared by the U.P.S.C. What the petitioner contends is that he was eligible as

of 1.1.1988 and as such the selection committee had to consider him as on that date and accordingly gave him his due date of entry in the service Mere passage of time by itself cannot result in denying to the Petitioner, if his fundamental rights were affected, relief, however, based on well known parameters of judicial review. The issue whether a review D.P.C. has to be held does not require the presence of the parties, they are neither necessary nor proper. If the Petitioner succeeds, the review D.P.C. on the same principle will have to consider the cases of all similarly situated candidates whose names appeared in the select list. We are therefore, clearly of the opinion that the Petition on that count cannot be dismissed. The failure by the selection committee to follow the rules, cannot defeat the right of the Petitioner.

4. With the above, we may now consider the case of the Petitioner on merits. Ordinarily, after having held that the order of C.A.T. on the ground of laches and non joinder of parties ought to be set aside, the matter should normally be remanded back to the tribunal for reconsideration. However, considering that on similar issue, this court has already given its pronouncement and that has been acted upon by the Respondent and to avoid multiplicity of proceedings, we propose to dispose

of the petition itself based on the record as it stands. In terms of the Indian Police Service, Regulation 1955, the committee ought to ordinarily meet every year and prepare the list of such members to the State Police force suitable for promotion. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned and shall not exceed the number of substantive vacancies. Sub Rule 2 of Rule 5 sets out the number of officers which have to be considered must be equal to 3 times the number of available vacancies. The third proviso to sub rule (2), clearly sets out that the committee shall not consider the case of a member of the state police service unless on the first day of January of the year in which it meets, he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government. As we have noted earlier, the Petitioner was appointed as Deputy Superintendent of Police on 18.4.1979. By order of 13.4.1989, the Petitioner was confirmed in the post of Deputy Superintendent of Police with effect from 31.12.1987. The Petitioner as on 31.12.1987 had completed eight years of service as Deputy Superintendent of Police. Therefore, the Petitioner was eligible as on 1.1.1988.

The fact that he was confirmed on 13.4.1989 with effect from 31.12.1987 would mean that the Petitioner in terms of the rules become eligible for consideration as on 31.12.1987. If the committee had not met in the year 1988 or 1989 and even if the committee had met in the year 1988-89 and had not considered the Petitioner on the ground that he had not been confirmed, on being confirmed in the substantive post with effect from 31.12.1987, a review committee had to meet to consider the case of the Petitioner. From the affidavit filed before this court by the respondent including U.P.SC. in the case of G.D. Pol, shows that the committee did not meet in the year 1988-89 and in the meantime, IPS (Appointment by Promotion) Regulation, 1955, were amended in March, 1989, so as to provide for preparation of the select list for promotion of SPS officers to IPS cadre on a financial year basis, instead of calender year basis.

. That amendment in so far as Petitioner is concerned would really be of no consequences. If the Petitioner was eligible to be considered on 1.1.1988, then merely because there is subsequent amendment, by itself would not defeat the Petitioner’s right to be considered for appointment by promotion in the IPS cadre, based on the rules as they stood when the Petitioner became eligible. The settled law is that the Petitioner’s right for consideration would be governed by the law on the date

he became eligible and the subsequent change of law in a case of consideration by promotion will not defeat those rights unless the law was made retrospective. In the instant case, it was prospective.

. Similar issue was under consideration before the Apex Court in Union of India and Others Versus Vipinchandra Hiralal Shah 1997 Supreme Court Cases (L&S) 41. The issue therein was whether IAS (Appointment by Promotion) Regulation 55, which is similar in language to the Regulation as of the Indian Police Force. Considering Regulation 5, of those regulations, the Apex Court noted that the Regulation requires that the selection committee shall ordinarily meet at the intervals not exceeding one year and prepare list of such members as held by them to be suitable to the service. It is also noted that the selection committee, shall not consider the case of the member to the State Civil Services unless on the first of January of the year, in which they meet, he is substantive in the State Service and has completed not less than eight year of continuous service (whether officiating or substantive) in the post or any other post or posts declared equivalent thereto by the State Government. Thereafter, on a consideration of the various clauses, the Apex Court was pleased to hold that the rule was intended to be mandatory in nature, because the eligibility off the persons to be considered in the matter of length of service, is with

reference to the first day of January of the year in which the selection committee meets. The Apex Court in Para 11 observed as under :

> "It must, therefore, be held that in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from amongst the State Civil Service Officers who fulfil the conditions regarding eligibility on the first day of January of the year in which the Committee meets and fall within the zone of consideration as prescribed in clause (2) of Regulation 5. The failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason, the Selection Committee is not able to meet during a particular year, the Committee when it meets next should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the each year keeping in view the number of vacancies in that year after considering the State Civil

> Service officers who were eligible and fell within the zone of consideration for selection in that year."

. The position of law would be as declared by the Apex Court. In so far as the Indian Police Service, Regulation 55 are concerned in terms of the Regulation as they stood selection for vacancies had to be on 1.1.1988. Considering the law laid down in the case of Vipinchadnra (supra), it must be held that Regulation 5 was mandatory and as the Petitioner fell in the zone of consideration and was holding the post in substantive vacancy, then he was eligible to be considered as of 1.1.88 when the committee met in 1989. As such even if the Petitioner was not confirmed as on 1.1.1988, the subsequent act of issuing order on 13.4.1989 with effect from 31.12.1987, confirming the petitioner in the post of Deputy Superintendent of Police would result in the Petitioner becoming eligible as on 31.12.1987 and for being considered as on 1.1.1988.

5. Having said so, we are clearly of the opinion that the impugned order of the Tribunal is liable to be quashed and set aside and consequently Petition has to be made absolute in terms of Prayer Clause (a).

. The Respondents to constitute a review D.P.C. to

consider the case of the Petitioner for the year of allotment considering that the Petitioner became eligible on 31.12.1987 and he was liable for consideration by the committee as on 1.1.1988. The entire exercise to be completed within three months. Rule made absolute accordingly.

**(MRS.V.K.TAHILRAMANI,J.)** **(F.I.REBELLO, J.)**